



**Littler Mendelson, P.C.**  
650 California Street  
20<sup>th</sup> Floor  
San Francisco, CA 94108-2693

September 22, 2008

Kimberly L. Owens  
Direct: 415.439.6216  
Direct Fax: 415.743.6599  
kowens@littler.com

**VIA E-FILING**

The Honorable Maxine M. Chesney  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
Courtroom 7, 19th Floor  
San Francisco, California 94102

Re: *Wong, et al. v. HSBC Mortgage Corporation (USA), et al.*  
United States District Court Case No. 07-2446 MMC (JCS) [ECF]  
**Corrected Exhibit 28 to Docket # 205**

Dear Judge Chesney:

This firm represents Defendants HSBC Mortgage Corporation (USA) and HSBC Bank USA, N.A. in the above-referenced matter.

On Friday, September 19, 2008, Defendants e-filed their Opposition to Plaintiffs' Motion for Rule 23 Class Certification. It has come to my attention that, due to a clerical error, the incorrect document was e-filed for Exhibit 28 to the Declaration of Michelle R. Barrett (docket # 205). Attached to this letter is the correct Exhibit 28, which is the Declaration of Evette Monteith in Opposition to Plaintiffs' Motion for Class Certification. In addition, the correct Exhibit 28 is included in the Chambers' Copy that was hand delivered to you today.

Sincerely,

Kimberly L. Owens

cc: Bryan Schwartz, Counsel for Plaintiffs (Via E-Filing)

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1 GEORGE J. TICHY II, Bar No. 041146  
2 MICHAEL F. MCCABE, Bar No. 111151  
3 MICHELLE R. BARRETT, Bar No. 197280  
4 KIMBERLY L. OWENS, Bar No. 233185  
5 LITTLER MENDELSON  
6 A Professional Corporation  
7 650 California Street, 20th Floor  
8 San Francisco, California 94108  
9 Telephone: (415) 433-1940  
10 Facsimile: (415) 399-8490  
11 E-mail: gtichy@littler.com, mmccabe@littler.com,  
12 mbarrett@littler.com, kowens@littler.com

13 Attorneys for Defendants

14 HSBC MORTGAGE CORPORATION (USA) and  
15 HSBC BANK USA, N.A.

16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA  
18 SAN FRANCISCO DIVISION

19 Philip Wong, Frederic Chaussy, and Leslie  
20 Marie Shearn, individually, on behalf of all  
21 others similarly situated, and on behalf of  
22 the general public,

23 Plaintiffs,

24 v.

25 HSBC Mortgage Corporation (USA);  
26 HSBC Bank USA, N.A.; and DOES 1  
27 through 50, inclusive,

28 Defendant.

Case No. C 07 2446 MMC [ECF]

**DECLARATION OF EVETTE MONTEITH  
IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR CLASS CERTIFICATION  
FED. R. CIV. P. 23**

Date: October 10, 2008  
Time: 9:00 A.M.  
Courtroom: 7 (19th Floor)  
Judge: Hon. Maxine M. Chesney

I, Evette Monteith, hereby declare and state:

1. I am over the age of 18, and I have personal knowledge of the facts listed below. If called as a witness, I would testify to the following:

2. I work for HSBC Mortgage Corporation USA ("HMCU") as a Retail Mortgage Lending Consultant, also commonly referred to as a "loan officer." I have worked for HMCU as a "loan officer" from 1998 to the present. Prior to that, I was a loan officer for Republic National Bank and Greenpoint Mortgage Corp., both located in New York. I am "assigned" to the

1 Loan Production Office ("LPO") located at 2 Hanson Place, 13th Floor, Brooklyn, New York 11217.  
 2 Although I am "assigned" to this LPO location, I am not obligated to spend any specific amount of  
 3 time at this location. In fact, as described below, I work at the LPO on a very limited basis.

4 3. On occasion, and as will more fully be described below, I also "service"  
 5 branch locations on Avenue D in Brooklyn as well as Flatbush Avenue in Brooklyn, New York.  
 6 However, I am not obligated to service these branches nor am I required to spend specific days or  
 7 hours in the branches. Generally, I visit both of these branches at least one time per month.

8 4. As a loan officer, I have chosen to focus my business on selling one particular  
 9 mortgage product which is a Community Reinvestment Act ("CRA") discounted mortgage for first  
 10 time home buyers. It is my responsibility to bring these loans to closing, service the HMCU's  
 11 customers related to this mortgage product, identify additional sources of business, and build my  
 12 own customer base. As a loan officer, I am responsible for the entire process.

13 5. While my responsibilities include sales, my job includes duties much more  
 14 extensive than that. For example, I must gather and analyze financial information from customers  
 15 and then determine what products might best meet the customer's needs. After that, I advise the  
 16 customer what products would be most advantageous to him or her. My analysis and advice to  
 17 customers requires me to do an independent evaluation of the information and situation and then to  
 18 use my own discretion to best direct the customer to a solution that works for him or her.

19 6. The vast majority of my business comes from an extensive source of referrals  
 20 from satisfied customers, as well as referral relationships that I have built up over the years. This  
 21 source is responsible for about 60% of my book of business. I have also developed an extensive  
 22 network of referrals from members of the New York City Police Department, Fire Department,  
 23 Corrections Department, as well as the MTA ("Metropolitan Transit Authority") and the New York  
 24 City Housing Authority. I also regularly perform a variety of marketing activities for these city  
 25 employees, including mailings and holding various seminars at their workplaces.

26 7. Because I particularly market the CRA mortgage, I work with clients whose  
 27 credit is not initially high enough to qualify for a mortgage. I refer those clients to various non-  
 28 profit organizations including, but not limited to: (i) Margaret Community Corp.; (ii) PACC;

1 (iii) West Harlem Group Assistance; and (iv) North East all of whom are located in Brooklyn, New  
2 York. These organizations all work with the clients to help improve their credit. Once these buyers  
3 are approved for a mortgage, I sell them the HMCU product which best suits their needs. A  
4 necessary component of this client base is education and, thus, I conduct numerous "1st Time  
5 Buyer" seminars at all these non-profit organization locations. This source of business represents  
6 approximately 25% of my total universe of business.

7 8. Another source of business is from the HSBC Bank USA, N.A. ("HBUS")  
8 bank branches that I service. However, the branch sources only represent approximately 15% of my  
9 business. I generally work very infrequently from the two branches assigned to me and usually only  
10 use the locations to meet clients from time to time. On the vast majority of occasions, I travel to  
11 wherever the potential customers are. Therefore, other than doing "floor duty" one time per month  
12 at my two bank branches, I am rarely physically at an HMCU branch.

13 9. Typically, I accomplish all of my work with customers personally and over  
14 the phone. I generally work 12-16 hours per day and sometimes on the weekends. I will meet with  
15 clients in a variety of locations outside the bank locations. The decision about where and when to  
16 meet clients is strictly for client convenience. I also have a number of evening appointments with  
17 clients at the LPO in Brooklyn. Essentially, I go where it is necessary to develop the personal  
18 relationship with a customer and close the deal.

19 10. Also, I have recently begun to work with some of my referring Real Estate  
20 agents at "Open House" events. At these events, I physically go to the house being sold and  
21 approach potential buyers by describing the HMCU mortgage products and work to develop the  
22 personal relationship.

23 11. To identify potential customers, I have significant freedom to engage in  
24 activities that best help me meet my sales goals. HMCU does not insist I do anything. HMCU also  
25 does not regulate my time spent on the job in any way. I set my own hours and manage my own  
26 time. I am not obligated to be sitting in a given location 9 to 5 on a given day. There is very little  
27 managerial control over my activities. No one directs where I am to be on a given day or at a  
28 particular time. In a way, I consider myself self-employed. The reason that I enjoy my job so much

1 is because of the flexibility of my job.

2 12. Kathryn Wallace is my manager. Other than providing her with a weekly  
3 report of my proposed schedule for the following week, we have little contact. If Ms. Wallace wants  
4 to contact me, or vice versa, we call each other from the road.

5 13. HMCU provides an incredible amount of training in a variety of areas and  
6 products which can generally be done online. This has helped to train me to do my job.

7 14. To my knowledge, and based upon my experience at HMCU, no policies  
8 and/or procedures exist regarding how I go about conducting my sales activities. Specifically,  
9 except for attending a once monthly meeting and contacting on occasion the two bank branches I am  
10 assigned to work with, no one regulates how I spend my time.

11 15. With the exception of the requirement that I use the Loan Quest program to  
12 enter customer information and utilize HMCU loan products, I have significant flexibility with  
13 respect to identification of loan products and methods of delivering such loan products to my  
14 customers. Even though some of my business comes from the non-profit organizations I described  
15 above and the HMCU Community Development officer, I still must identify the particular loan  
16 products to recommend. In every loan application situation, it is essential that I do an individualized  
17 evaluation of each potential client, including credit status, ability to repay the loan, comfort level of  
18 risk, etc. Because the vast majority of my customers are built upon years of previous dealings with  
19 them, their families, etc., they rely on me to discuss and recommend HMCU product options. I have  
20 complete flexibility to choose the methods of finalizing and delivering loan product to the customer.

21 16. I remain personally involved and engaged in the entire loan process from  
22 inception up to and including closing. Customer Service is the number one priority for me and the  
23 process typically involves the following: (i) identify the loan product for the customer; (ii) begin  
24 processing the loan by meeting with the customer to input information and writing down information  
25 and inputting later; (iii) utilizing the Loan Quest program to input customer data to begin processing  
26 the loan; (iv) remaining in close contact with the underwriter for loan to ensure that the loan is  
27 delivered to the customer; (v) meeting clients personally during the loan process; and (vi) staying  
28 connected with the customer to make sure they are satisfied as well to prospect for other client

1 referrals.

2           17. As a loan officer, I have the freedom to choose where and when I work.  
3 While I have meetings with customers from time to time in a bank branch or the LPO and do work  
4 from home, I am regularly out conducting seminars, meeting with clients at their places of business  
5 or their homes, going to Open House and other business development events. I typically work  
6 sometime between the hours of 7:00 a.m. to 9:00 p.m., including time spent on weekends. While the  
7 number of hours I work in a week are fairly constant, the location and actual times of day that I may  
8 work changes depending on customer need.

9           18. Since I am so regularly out at various events and different locations, computer  
10 access or other means of communication is essential. Therefore, I need have access to my business  
11 anytime and anywhere via my cell phone and laptop. It is because of these electronic devices that I  
12 can do my job anywhere the client takes me.

13           19. My car and public transportation are my primary modes of transportation. I  
14 am reimbursed for miles from the LPO to other places.

15           20. As a loan officer, my average yearly income from 2002 to the present has  
16 been no less than \$125,000 per year. The job of a loan officer is like owning your own business.  
17 Essentially the more you work, the more you earn. My clients have 24 hour telephone access to me,  
18 7 days per week. HMCU does not force me to provide this service to my customers. It is a choice I  
19 make to maximize my productivity and my compensation.

20           21. HMCU has a policy that customer application fees must be collected.  
21 Although I could choose to waive this \$325 application fee, the waived application fees would be  
22 deducted from my incentive commission for the month, as part of the incentive plan's calculations, if  
23 the loan does not close. However, if the loan closes, the customer eventually pays the fee at closing.  
24 I have a practice of requiring the customer to pay the application fees at the time I file their  
25 application. I have only waived the application fee and then had that waiver factored into my  
26 incentive commission payment on approximately two occasions. Frankly, I was not upset about  
27 these two "charge backs" because I knew up front that there was a possibility that the loans would  
28 not close and I knew that this type of "charge back" is part of my incentive plan.

22. As described above, I have significant flexibility with respect to determining when, where and how I perform my job duties. While I sometimes work long hours, I need this flexibility to successfully perform my sales activities. For example, I must sometimes meet with customers on nights or weekends. Because I need this flexibility, I believe that I am appropriately classified as "exempt," that is, my job should not require me to work a set number of hours at the same time each day. I need this flexibility in my hours and working location to successfully perform your job and my success with HMCU demonstrates this.

23. I do not understand why this lawsuit would be filed, because we have the flexibility to set our own hours, which allows us to do things like take care of our families or other personal things without having to check in with our managers. I am really hoping that this lawsuit doesn't change the way we do business and that it will not require us to set specific work hours or other boundaries to doing our jobs. If I were required to work a set number of hours at the same time every day, this would not be the job for me because I do not believe that I could maximize my earning potential and properly do my job.

I declare under penalty of perjury under the laws of the State of New York and the United States of America that the foregoing declaration is true and correct to the best of my personal knowledge. Executed this 16 day of September 2008 in Bay Shore, New York.

  
 EVETTE MONTEITH